Remarks

Claims 7, 8, 22, 29, 30, 33 and 42 are amended herein to correct typographical errors. Claims 23-26 are canceled herein. Claims 22-26 are claims that were presented for purpose of prosecution in Europe are canceled herein for U.S. prosecution.

No new matter is added. Examination of the subject application is respectfully requested.

Restriction Requirement

In response to the restriction requirement, Applicant elects with traverse Group II (claims 1-10 and 37-40, drawn to a method for enhancing hematopoiesis).

The above-referenced application is a § 371 U.S. national stage of PCT/US00/17427 filed June 22, 2000. There was no finding of non-unity of invention in the parent application. In fact, an International Preliminary Examination Report (IPER) was issued for all of the pending claims. Indeed, all of the claims were found to satisfy the criteria of novelty, inventive step, and utility.

In addition, the present application was filed with a reduced filing fee under 37 C.F.R. 1.492(a)(4), because the international preliminary examination fee was paid to the United States Patent and Trademark Office, and the International Preliminary Examination Report (IPER) stated that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33, have been satisfied for all the claims presented in the application entering the national stage.

However, the Office action indicates that the claims separated as Groups I-XII do not relate to a single inventive concept under PCT Rule 13.2, and asserts that the Groups lack the same technical feature. Applicant notes that all of the claims relate to a therapeutically effective *portion of a vascular tissue that can be used to enhance hematopoiesis*, which is a special technical feature. The restriction requirement stated that the single inventive concept was merely isolated vascular tissue, but the Applicant respectfully disagrees, particular because claim 26 (European use format) has been canceled. The pending claims all concern methods of using vascular tissue to enhance hematopoiesis or find agents that affect hematopoiesis.

The Office action further indicates that the single inventive concept is not novel (see page 3 of the Office action, first paragraph). However, the International Preliminary Examination Report (IPER) stated that the criteria of novelty, inventive step (non-obviousness), and industrial

applicability were met, and no additional prior art has been cited in the Office action. Thus, Applicant submits that the inventive concept has already been found to be patentable, and to define a common technical feature, as defined in 37 C.F.R. § 1.45. The Office action states that "vascular tissue that has been isolated and placed in a carrier is notoriously old and not novel." However, Applicant believes that it is only the present disclosure that teaches that vascular tissue can be used for *the purposes of enhancing hematopoiesis*. If the Examiner is aware of prior art to be addressed, then the Applicant respectfully requests that this prior art be cited in a subsequent action.

In the unlikely event that the restriction requirement based on lack of unity of is maintained, Applicant submits that it would not be an undue burden on the Examiner to search the subject matter of Groups II, drawn to a method for enhancing hematopoiesis, with the subject matter of Group III, drawn to a method for assaying for a modifier of hematopoiesis. Applicant requests that the restriction of Groups II and III be withdrawn.

Conclusion

Applicant respectfully requests the finding of non-unity of invention be withdrawn. Examination of all of the pending claims is respectfully requested. If there are any matters to be addressed before substantive examination of the claims, the Examiner is respectfully requested to contact the undersigned using the telephone number shown below.

Respectfully submitted,

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